



Legislative Research Council

RULES REVIEW COMMITTEE MINUTES

**Three hundred fourteenth meeting
Tuesday
June 7, 2011**

**Room 414
State Capitol
Pierre, South Dakota**

The three hundred fourteenth meeting of the Rules Review Committee was called to order by Chair Senator Jean Hunhoff at 8:52 a.m. CDT, June 7, 2011, in Room 414 at the State Capitol, Pierre, South Dakota, and via the Digital Dakota Network (DDN) at the following locations: Northern State University, 1200 S. Jay St., Room Lib 117, Aberdeen, South Dakota; Department of Human Services, 2361 Dakota Ave. S, Huron, South Dakota; Mitchell Technical Institute, 1800 E. Spruce, Room TC 155, Mitchell, South Dakota; SD School of Mines and Technology, 501 E. St. Joseph St., Room CB 109, Rapid City, South Dakota; University Center, 2205 Career Ave., Room 282 S, Sioux Falls, South Dakota; and Department of Transportation, 1306 W. 31st St., Yankton, South Dakota..

A quorum was determined with the following members answering the roll call: Senators Angie Buhl, Jean Hunhoff (Chair), and Mike Vehle; and Representative Peggy Gibson. Representative R. Shawn Tornow (Vice Chair) joined the meeting at 9:46 a.m. Representative Roger Hunt was excused. Staff members present were Doug Decker, Code Counsel, and Kris Schneider, Senior Legislative Secretary. All members appeared via DDN except Representative Gibson who was in Pierre.

All material distributed at the meeting is attached to the original minutes on file in the Legislative Research Council (LRC). For the purpose of continuity, these minutes are not necessarily in chronological order. This meeting was recorded by South Dakota Public Broadcasting. The archived recording is available at the LRC website at <http://legis.state.sd.us> under "Interim Information – Minutes and Agendas."

Approval of Minutes

Senator Vehle moved, seconded by Senator Buhl, that the minutes of the May 10, 2011, meeting be approved. Motion prevailed on a roll call vote with 4 ayes, 2 excused. Members voting aye: Buhl, Gibson, Hunhoff, and Vehle. Members excused: Hunt and Tornow.

Rules Reviewed

Department of Health: Board of Funeral Service – Amend 20:45:03:02 to allow students who are currently enrolled in an accredited Mortuary Science Program to perform the same duties as a trainee and amend 20:45:03:03 to require coursework in certain areas but not specify a certain number of credits for each course.

Mr. Tim Bachman, Sioux Falls, member of the Board of Funeral Service, reviewed the proposed rules.

Representative Gibson moved, seconded by Senator Buhl, to approve the rules proposed by the Department of Health: Board of Funeral Service. Motion prevailed on a roll call vote with 4 ayes, 2 excused. Members voting aye: Buhl, Gibson, Hunhoff, and Vehle. Members excused: Hunt and Tornow.

Department of Health: Division of Health Systems Development and Regulation – Amend rules to allow employing facilities and physicians with a J-1 Visa more flexibility in scheduling work hours, to have applications submitted by facilities in an order that follows the federal guidelines, and to allow applications and additional information to be sent between parties by other means as approved by the department.

Mr. Tom Martinec reviewed the proposed rules.

Representative Gibson moved, seconded by Senator Vehle, to approve the rules proposed by the Department of Health: Division of Health Systems Development and Regulation. Motion prevailed on a roll call vote with 4 ayes, 2 excused. Members voting aye: Buhl, Gibson, Hunhoff, and Vehle. Members excused: Hunt and Tornow.

Office of the Attorney General: 24/7 Sobriety Program – Amend rules to establish a definition of ignition interlock device, require the verification of installed ignition interlock devices by participating agencies, require the periodic inspection of those devices, establish standards for ignition interlock devices and permit the Attorney General to approve ignition interlock devices, clarify language regarding enrollment and placement of offenders on the 24/7 Sobriety Program, and establish fees within the range as established during the 2011 Legislative Session for twice-a-day PBT testing, urinalysis, drug testing, electronic alcohol monitoring testing, ignition interlock testing and participation fees.

Mr. Charlie McGuigan reviewed the proposed rules.

Senator Vehle moved, seconded by Representative Gibson, to approve the rules proposed by the Office of the Attorney General: 24/7 Sobriety Program. Motion prevailed on a roll call vote with 4 ayes, 2 excused. Members voting aye: Buhl, Gibson, Hunhoff, and Vehle. Members excused: Hunt and Tornow.

Department of Education: Board of Education – Repeal rules to eliminate unnecessary language regarding school district general fund balances due to the repeal of statutes for excess general fund balance calculations.

Ms. Tami Darnall reviewed the proposed rules.

Representative Gibson moved, seconded by Senator Buhl, to approve the rules proposed by the Department of Education: Board of Education. Motion prevailed on a roll call vote with 4 ayes, 2 excused. Members voting aye: Buhl, Gibson, Hunhoff, and Vehle. Members excused: Hunt and Tornow.

Representative Tornow joined the meeting at 9:46 a.m.

Department of Labor and Regulation: Electrical Commission – Amend rules to adopt the 2011 National Electrical Code (the "2011 NEC"); define terms; determine the passing examination score for a Class B Electrician; clarify the terminology for an application for licensure; remove the terminology of "industrial"; clarify the standards and documentation required to attain levels of licensure; implement rule allowing for the recovery of costs; removal of 30 days grace period in regards to reinstatement fee for lapsed licenses; document the changes to allowable continuing education courses and the number of hours allowed; removal of requirement to print courses in newsletter; addition of the word "calculated" when considering the requirement for a permit; address fee administration for wiring permits and inspections; document the inspection notification process; clarify the state license required to attain a municipal license; repealing of a rule requiring ground fault circuit interrupter near wash basins as it is required in the 2011 NEC; and addressing an incorrect reference as to the permit requirement for cogeneration systems

Mr. J. J. Linn, Pierre, Executive Director for the Electrical Commission, reviewed the proposed rules. He displayed an Excel spreadsheet to assist in summarizing the proposed inspection fees and fund balances.

Representative Gibson moved, seconded by Senator Buhl, to approve the rules proposed by the Department of Labor and Regulation: Electrical Commission. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Buhl, Gibson, Hunhoff, Tornow, and Vehle. Member excused: Hunt.

Department of Labor and Regulation: Division of Insurance – Amend rules to update the sources referenced in rule; incorporate the new 2011 Medicare deductibles and update the rules in accordance with federal regulations; updating cross references to SDCL 58-17C; add a trend test as a way to trigger the risk-based capital company action level for property and casualty insurers and update the sources referenced in rule.

Ms. Melissa Klemann reviewed the proposed rules.

Senator Hunhoff moved, seconded by Senator Vehle, to approve the rules proposed by the Department of Labor and Regulation: Division of Insurance. Motion prevailed on a roll call vote with 4 ayes, 1 nay, 1 excused. Members voting aye: Buhl, Gibson, Hunhoff, and Vehle. Member voting nay: Tornow. Member excused: Hunt.

Department of Revenue: Division of Motor Vehicles – Amend a rule to change the definition of a trailer.

Ms. Deb Hillmer reviewed the proposed rule.

Representative Gibson moved, seconded by Representative Tornow, to approve the rule proposed by the Department of Revenue: Division of Motor Vehicles. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Buhl, Gibson, Hunhoff, Tornow, and Vehle. Member excused: Hunt.

Department of Social Services: Economic Assistance – Amend Supplemental Nutrition Assistance Program rules to remove inapplicable provisions, remove obsolete references, and update terminology.

Ms. Laura Ringling reviewed the proposed rules.

Senator Buhl moved, seconded by Senator Vehle, to approve the rules proposed by the Department of Social Services: Economic Assistance. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Buhl, Gibson, Hunhoff, Tornow, and Vehle. Member excused: Hunt.

Department of Social Services: Economic Assistance – Amend Sales Tax on Food Refund Program rules to repeal inapplicable provisions, identify the annual enrollment period, clarify eligibility and benefit limits for former supplemental nutrition assistance benefits recipients, and update terminology.

Ms. Ringling and **Ms. Judy Toelle** reviewed the proposed rules.

Senator Hunhoff moved, seconded by Representative Tornow, to approve the rules proposed by the Department of Social Services: Economic Assistance. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Buhl, Gibson, Hunhoff, Tornow, and Vehle. Member excused: Hunt.

Department of Social Services: Child Care Services – Amend Child Care Services rules to repeal obsolete rules, remove obsolete references, update terminology, add procedures for implementing and maintaining a waiting list, reduce the federal poverty level standard for determining eligibility, indicate that the department shall set reimbursement rates in the 75th percentile subject to the availability of funds, clarify provider eligibility criteria, update the timeframe in which a household may report a change in circumstances, update the circumstances under which the department may withhold payment from a provider, clarify certain individuals ineligible to receive child care assistance, and remove duplicative provisions.

Ms. Ringling and **Ms. Pat Monson** reviewed the proposed rules.

Senator Vehle moved, seconded by Senator Hunhoff, to approve the rules proposed by the Department of Social Services: Child Care Services. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Buhl, Gibson, Hunhoff, Tornow, and Vehle. Member excused: Hunt.

Department of Social Services: Division of Medical Services – Amend rules to update definitions; modify the basis of reimbursement and reimbursement amounts for inpatient services, outpatient services, and physician and other health services; modify dispensing fees for certain items dispensed by a pharmacy or public health service provider; and clarify reimbursement methodologies.

Ms. Ringling and **Mr. Larry Iversen** reviewed the proposed rules.

Public Testimony

Mr. Jim Tomlinson, Sioux Falls, Sanford Health, opposed the proposed rules. He believed that there is a flaw in the cost reporting system. He noted that the Legislature removed the inflationary increase for Medicaid payments and did not require State reimbursement for underpayments. He questioned why healthcare providers were responsible for refunding overpayments when the State will not pay underpayments.

Mr. Michael Miller, Sioux Falls, Avera McKennan Hospital, spoke in opposition to the proposed rule dealing with the Outpatient services cost settlement.

Mr. Dave Goehring, Rapid City, Regional Health, objected to the proposed rules. He offered the comment that cost settlement should be done consistently with all providers.

Mr. John Clarke, Sioux Falls, Children's Care Hospital and School, also opposed the proposed rules. He believes that the proposed rules go beyond the 4.5% reduction and the intent of the Legislature. He asked that the committee revert ARSD 67:16:03:06.06(5) for additional hearings and work, to exempt children's care hospital from everything except the 4.5% reduction, and for a delayed implementation of 2013.

Ms. Renee Tisdall, Mobridge, Mobridge Hospital, spoke in opposition to the proposed rules. She asked that inflation be excluded from the cost settlement process. She also questioned what would occur with the prior year cost settlements that the department is behind in paying.

In response to the public testimony, Mr. Iversen stated that the department applies their policies consistently with every facility. In regards to the statement that the department is not paying underpayments, Mr. Iversen stated that it is the only way for them to not pay inflation and maintain their current budget. There have been discussions with provider groups on how inflation could be pulled out; however, it would be difficult to do as the information is rolled into the Medicaid reports.

Senator Buhl moved, seconded by Representative Tornow, to revert the rules proposed by the Department of Social Services: Medical Services to a prior step to resolve the issues regarding the underpayments.

Senator Hunhoff moved a substitute motion, seconded by Senator Vehle, to approve the rules proposed by the Department of Social Services: Medical Services. Motion prevailed on a roll call vote with 3 ayes, 2 nays, 1 excused. Members voting aye: Gibson, Hunhoff, and Vehle. Members voting nay: Buhl and Tornow. Member excused: Hunt.

Department of Social Services: Division of Medical Services – Adopt a rule to outline reimbursement guidelines for certain cost outlier claims submitted by in-state acute care hospitals.

Ms. Ringling stated that the department decided to withdraw the proposed rule, thus no action was necessary.

Department of Public Safety: Office of the State Fire Marshal -- Amend rules to adopt the 2009 edition of the International Building, Fire, and Mechanical Codes as the fire safety standards for the Department of Public Safety.

Mr. Paul Merriman reviewed the proposed rules.

Senator Vehle moved, seconded by Representative Tornow, to approve the rules proposed by the Department of Public Safety: Office of the State Fire Marshal. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Buhl, Gibson, Hunhoff, Tornow, and Vehle. Member excused: Hunt.

Department of Game, Fish and Parks – Amend a General Provisions rule to eliminate definitions for "mule buck any whitetail", "A' license", and "R' license", and establish definitions for "agricultural purposes", "operate", and "owner-operator"; and amend Application for License rules to provide consistency in language used to describe "landowner preference" licenses; clarify landowner preference license eligibility requirements and restrictions for landowners, tenants and employees; and clarify landowner preference license eligibility requirements and restrictions for persons who own an interest in legal entities which hold title to agricultural land (shareholders of corporations, members of limited liability companies, partners in a partnership, and trust beneficiaries).

Mr. Tony Leif reviewed the proposed rules and answered questions regarding the changes being made to the landowner preference rules.

Representative Tornow moved, seconded by Senator Buhl, to approve the rules proposed by the Department of Game, Fish and Parks. Motion prevailed on a roll call vote with 3 ayes, 2 nays, 1 excused. Members voting aye: Buhl, Tornow, and Vehle. Members voting nay: Gibson and Hunhoff. Member excused: Hunt.

Department of Transportation – Amend a speed limit rule in Lyman County on SD Highway 248 from its junction with SD Highway 47 south to Interstate 90 through Reliance.

Mr. Bill Nevin reviewed the proposed rule. He noted that the commission decided to only change the speed zone through the town of Reliance.

Representative Gibson moved, seconded by Senator Buhl, to approve the rule proposed by the Department of Transportation. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Buhl, Gibson, Hunhoff, Tornow, and Vehle. Member excused: Hunt.

Next Meeting Schedule

The next meeting of the Interim Rules Review Committee will be a DDN meeting held on July 12, 2011.

Adjournment

Representative Gibson moved, seconded by Representative Tornow, that the meeting be adjourned. Motion prevailed on a roll vote with 5 ayes, 1 excused. Members voting aye: Buhl, Gibson, Hunhoff, Tornow, and Vehle. Member excused: Hunt.

Chair Hunhoff adjourned the meeting at 1:14 p.m.



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